



January 14, 2003

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Re: Amendment of Section 73.202(b)
Table of Allotments
Glenville, North Carolina
(MB Docket No. 02-352; RM-10602)**

Dear Ms. Dortch:

Transmitted herewith on behalf of Georgia Carolina Radiocasting Company, LLC is an original and four copies of its Reply Comments in the above-referenced proceeding.

Should any questions arise concerning this matter, please contact this office directly.

Sincerely,

Mark Blacknell

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Amendment of Section 73.202(b),) MB Docket No. 02-352
Table of Allotments,) RM-10602
FM Broadcast Stations.
(Glenville, North Carolina))

To: Chief, Allocations Branch

REPLY COMMENTS

Georgia-Carolina Radiocasting Company, LLC ("GCRC"), by its attorneys and pursuant to Notice of Proposed Rule Making, MB Docket No. 02-352, RM-10602, **DA** 02-3066, released November 8, 2002 ("NPRM"), hereby submits its Reply Comments in the above-referenced proceeding. In support whereof, the following is respectfully submitted:¹

The Stair Counterproposal Should Be Returned As An Unacceptable Alternative Counterproposal

1. Following the submission of a Petition for Rule Making ("Petition") filed by Glenville Radio Broadcasters ("GRB"), the Stair Company ("Stair") filed both a counterproposal proposing the allotment of Channel 290C2 to Weaverville, North Carolina, ("Stair Counterproposal")² as well as a minor modification application specifying facilities for WCTU(FM), Tazewell, Tennessee ("Stair Application")³ that would preclude other allotment proposals in this proceeding. By doing so, Stair has submitted alternative counterproposals to

¹ The NPRM established January 14, 2003 as the deadline for filing reply comments. Accordingly, the instant reply comments are timely filed.

² See Counterproposal filed by Stair Company on December 30, 2002.

³ See FCC File No. BPH-20021210AAP.

the Commission which essentially prevent other parties from pursuing the same options that it is now attempting to reserve for itself to the detriment of the public interest. In light of the Commission's clear prohibition against alternative counterproposals, the Stair Counterproposal must be returned as unacceptable for consideration, and the Commission should proceed with a comparison between the original GRB Petition and GCRC's own counterproposal.

Stair Company Has Attempted To Circumvent The Commission's Bar Against The Submission Of Alternative Counterproposals

2. The Stair Counterproposal is mutually exclusive with both the GRB Petition seeking the allotment of Channel 289.4 for first local service to Glenville, as well as the GCRC Counterproposal proposing Channel 290A for first local service at Clyde.⁴ The allocation sought by the Stair Counterproposal is also mutually exclusive with the presently licensed facilities of WCTU(FM) on Channel 290A at Tazewell, Tennessee.

3. Furthermore, the Stair Counterproposal is mutually exclusive with a minor modification application that it filed for WCTU(FM) on December 11, 2002. This application proposes a site change of approximately 17.79kilometers to the southeast, and remains pending before the Commission, simultaneously with Stair's present proposal to realLOT Channel 290 as a Class C2 channel to Weaverville. By definition, one of these mutually exclusive options will not be built by Stair. However, with both of these proposals now pending before the Commission, Stair has put itself in a position where it can concurrently pursue both options, presumably selecting the favored alternative once its business plans develop. **As** demonstrated below, Stair preserves these alternatives for itself at the expense of the public interest. Further, the presence of these alternative requests hcfors the Commission not only work against the public interest, but actually violates a clearly established Commission policy against allowing such a situation.

⁴ See Petition for Rule Making tiled by Glenville Radio Broadcasters on September 13, 2002; Counterproposal tiled by Georgia-Carolina Radiocasting Company, LLC on December 30, 2002.

Stair's Counterproposal Must Be Rejected As An Alternative Proposal

4. In 2001, the Commission announced that it would "no longer entertain optional or alternative proposals presented in either an initial petition for rule making or in a counterproposal." See Winslow, Camp Verde, Mayer and Sun City West, Arizona, 16 FCC Rcd 9551, para. 9, (2001) ("*Winslow*"). Given Stair's application to move WCTU(FM)'s present facilities, filed after the NPRM was released, and which can only be built to the exclusion of the facilities proposed in the Stair Counterproposal, the Stair Counterproposal is an alternative proposal as contemplated by the Commission in the *Winslow* decision, and should be returned as unacceptable for consideration

5. The Commission has a clearly established policy of not entertaining contingent proposals. See Oxford and New Albany, Mississippi, 3 FCC Rcd 615 (1988), *recon. denied* 3 FCC Rcd 6626 (1988). As explained by the Commission, "this procedural policy is necessary as such requests have excessively taxed our administrative resources and unreasonably cluttered the Commission's data base system, and in some instances, precluded the acceptance of otherwise viable requests for new or a modification of existing FM facilities." *Winslow* at para.

9. Here, Stair has asked the Commission to spend its time and resources considering two mutually exclusive alternative proposals, the ultimate selection of which is left to only to Stair

Stair Has Precluded The Most Preferential Arrangement Of Allotments By Submitting Alternative Proposals

6. In rejecting alternative proposals, the Commission noted that "even a single optional or alternative proposal has required us to speculate on the proposal actually preferred by the proponent or what proposal would, in our view, have the greatest public interest benefit. Multiple optional or alternative proposals would only compound this difficulty." *Winslow* at para. 9. That is exactly the situation here.

7. The Stair Application prevents a number of alternative allotment proposals in this proceeding.⁵ By filing an application for a site change, Stair prevented the proposal of any number of alternative allotment schemes by any party that did not have the power to dismiss the Stair Application – that is, anyone but Stair itself.

8. The tactical intent of the Stair Application is clear. The Stair Application was filed December 11, 2002 - well after the original Glenville Petition for Rule Making was filed on September 13, 2002 - and shortly before the date counterproposals were due in this proceeding. In fact, the engineering exhibit accompanying the Stair Counterproposal, which shows the clearance of the proposed allotment, is dated December 9, 2002 - two days before the Stair Application was filed. Clearly, the minor modification request was filed with the sole purpose of blocking a wide range of other possible proposals in this proceeding by any party other than Stair. Essentially, Stair has used the tactical filing of a minor modification application to prevent other parties from having the same options that it is now attempting to reserve for itself.

9. In light of clear violation of the bar against alternative proposals as established in *Winslow*, as well as its clear gaming of the Commission's rules to prevent the most preferential arrangement of allotments, the Stair Counterproposal should be returned as unacceptable for consideration.

⁵ By way of illustration: but for the Stair Application, a party to this proceeding could have proposed allotting Channel 290A to Lake Junaluska as a first local service, a community whose population of 2,675 (U.S. Census 2000) exceeds that of Weaverville, Clyde, and Glenville. Alternatively, a party could have proposed allotting Channel 290A to Weaverville as a first local service, which would have allowed 290A to remain at Tazewell as its only fulltime service. Contrary to the Stair Counterproposal, WNTT(AM), Tazewell is not a full-time **AM** station. According to *Unlimited Time Operation Operations by Existing A M Daytime-Only Radio Broadcast Stations*, 4 FCC Rcd 1738, (1989), an AM station is only considered full time if it has 250 or more watts during non-daylight hours. WNTT(AM)'s authorized nighttime power is 0.034 kW.

The Commission Should Hold All Action On the Stair Application Pending the Resolution of this Rule Making

10. The Commission should cease processing the Stair Application until such time as it resolves this proceeding. To do otherwise would unfairly prejudice the rights of the parties to this proceeding that have not engaged in the manipulation of the Commission's rules and policies. An objection to this application will be filed shortly.

11. Furthermore, the Commission should not let Stair attempt to cure ~~the~~ defective status of the Stair Counterproposal by requesting dismissal of the Stair Application. It is well established that counterproposals must be technically correct and substantially complete when filed and that counterproposals will be considered only if they are filed by the deadline date for comments. See Section 1.420(d) of the Commission's Rules; Broken Arrow and Bixby, Oklahoma, 4 FCC Rcd 674 (1989), recon., 5 FCC Rcd 1241 (1990). The Stair Counterproposal was defective as an alternative counterproposal at the time of filing, and the deadline for counterproposals in this proceeding was December 30, 2002.

The Public Interest is Best Served by an Allocation of Channel 290A to Clyde, North Carolina

12. Thus, of the remaining proposals (the original Glenville and the Clyde counterproposal), the allotment of Channel 290A to Clyde will result in a preferential arrangement of allotments for all the reasons set forth in the GCRC Counterproposal filed December 30, 2002.

13. As demonstrated in the CCKC Counterproposal, the allotment of Channel 290A is clearly in the public interest, as it results not only in a first local service to Clyde, but in an additional **full** time reception service to some 97,124 persons in an area of 2,465 square kilometers.⁶ The proposed site provides 100% continued city-grade coverage to the community

⁶ See GCRC Counterproposal, Technical Report at 2.

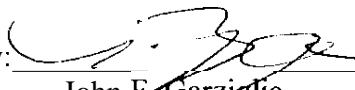
of Clyde, North Carolina, and is compliant with the spacing restrictions of 73.207.⁷ There are no individuals that would be underserved as a result of the plan put forth in the Counterproposal.

Conclusion

14. WHEREFORE, for the reasons above, the Counterproposal filed by the Stair Company should be returned as unacceptable for filing, and the Commission should place the counterproposal of Georgia-Carolina Radiocasting Company, LLC on public notice for further consideration in this rule making proceeding.

Respectfully submitted,

**GEORGIA-CAROLINA RADIOCASTING
COMPANY, LLC**

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January 14, 2003

⁷ *Id.*

CERTIFICATE OF SERVICE

I, Regina McFadden, a secretary in the law firm of Womble Carlyle Sandridge & Rice, PLLC, do hereby certify that I have on this 14th of January, 2003, caused copies of the foregoing Reply Comments to be mailed to the following by first-class United States mail, postage prepaid:

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